

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:**

B-211375

**DATE:** November 9, 1983**MATTER OF:**

Government Sales Consultants, Inc.

**DIGEST:**

1. Determination to conduct negotiated procurement, because three prior versions of product description had proved unsatisfactory for advertised procurement and current version had not been market tested, is reasonable.
2. Protester has not demonstrated inaccuracy of agency's assertion that it would have been impossible to establish an average usage rate for dual-purpose microfiche reader/printers which are used by many agencies nationwide so as to allow reasonable basis for consideration of cost of supplies in current procurement.
3. General Services Administration election to award two contracts, one for each of two types of microfiche reader/printers which differ technologically and are better suited to different types of applications, was a reasonable response to responsibility to satisfy the needs of a wide range of federal agencies.

Government Sales Consultants, Inc. (GSCI), protests any award under General Services Administration's (GSA) request for proposals (RFP) No. FGE-B9-75246-N to establish a mandatory source of microfiche readers and printers for federal agencies. We deny the protest.

GSA is authorized to enter into requirements contracts for commonly used items and list the contractors on federal supply schedules when it is determined that doing so is advantageous to the government in terms of economy, efficiency, or service. 40 U.S.C. § 481(a) (Supp. IV, 1980).

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The contracts and the schedules specify which agencies must acquire these items by issuing delivery orders to contractors on a particular schedule (mandatory user agencies) and which agencies may do so (nonmandatory agencies). Federal Property Management Regulations, 41 C.F.R. § 101-26.402 (1982). See Amray, Inc., B-210490, February 7, 1983, 83-1 CPD 135.

GSA issued this RFP in March 1983, seeking offers for indefinite quantity contracts for electrostatic and dry silver microfiche readers and printers. These machines project information stored on photographic film onto a screen where the information may be read; the terms "electrostatic" and "dry silver" refer to two different methods of printing on paper the information displayed on the screen. These contracts will be a source of supply for these two types of readers and printers for all departments and agencies in the executive branch of the government, except for the Postal Service and the Department of Defense. The products are described in the RFP in two "commercial item descriptions" (CID's) which delineate the salient characteristics of the required equipment.

GSCI contends that the GSA's use of negotiated procurement procedures is improper where GSA is only evaluating price and where the technical specifications are based on well-defined CID's. GSCI also contends that GSA has no technical reason not to award the entire contract for one type of machine, either electrostatic or dry silver, whichever is less expensive. GSCI also asserts that GSA is improperly ignoring the cost of supplies in its evaluation and contends that it should be a simple matter for GSA to survey agencies and arrive at some estimation of the supplies required for each type of machine. GSCI points out that other agencies, such as the Defense Logistics Agency, have successfully procured this type of equipment using advertised procedures.

GSA states that it determined to use negotiated procedures because the CID's in the RFP had not been tested in the marketplace. In this respect, the contracting officer's determination to negotiate these contracts states, in part:

"Although we expect competition, until the CID is tested at least once, factors such as MOL's [maximum order limitations], warranty, delivery and performance will have to be negotiated to serve the best interests of the Government."

This assessment was based, at least partially, on experience with the original version of the CID in two advertised procurements, each of which was canceled because of deficiencies in the CID, and a revised version that was discovered to be unduly restrictive even before it was used in a procurement.

GSA also states that the variety of uses to which each of these dual-purpose (reading and printing) machines might be put within the broad range of using agencies does not permit the establishment of a realistic usage factor to determine, on a reasonable basis, the amount by which supplies should be considered. GSA contends that it is up to the using agency to determine which type of machine, dry silver (more expensive, but better quality prints for subsequent photocopying) or electrostatic, offers the lowest overall cost commensurate with the agency's needs.

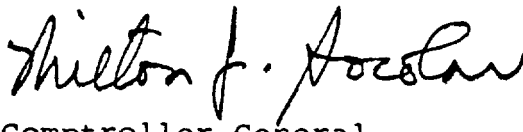
Our review of a contracting officer's determination to conduct a negotiated procurement, on the basis that it is impracticable to obtain competition by formal advertising, is limited to ascertaining whether there is a reasonable basis for the determination. Department of Commerce; International Computaprint Corporation, 57 Comp. Gen. 615 (1978), 78-2 CPD 84. Experience with prior procurements may provide a reasonable basis. Self-Powered Lighting, Ltd., 59 Comp. Gen. 380 (1980), 80-1 CPD 195.

The contracting officer's assessment was based on experience with three earlier versions of the CID, the first two of which resulted in the failure of two advertised procurements and the third of which was found to be deficient before it was even used in a procurement, and the fact that the current CID was prepared without comment by either industry or using agencies and had not been market tested. Given the complexity of drafting a specification to meet the needs of numerous agencies within the executive branch of the government, a problem which appears to us to be fundamentally different from preparing specifications to meet the requirements of only one agency, we can appreciate the contracting officer's concern for the validity of the CID and its compliance with the requirements of §§ 1-1.305 and 1-1.307 of the Federal Procurements Regulations, 41 C.F.R. §§ 1-1.305, 1-1.307 (1983), for specifications and purchase descriptions in advertised procurements. In these circumstances, we cannot conclude that the contracting officer's decision lacked a reasonable basis.

Moreover, we find unpersuasive GSCI's contention that GSA's evaluation of offers is necessarily improper because it omits consideration of the cost of supplies. As GSA points out, because these machines are used nationwide as both readers and reader/printers it would have been nearly impossible to assemble the information needed to establish a reasonably based average usage for evaluation purposes which would assure the government of the lowest ultimate cost in time for this procurement. GSCI has offered nothing which persuades us of the inaccuracy or unreasonableness of GSA's position. Moreover, nothing precludes individual agencies from considering these factors in determining how best to satisfy their minimum needs.

GSCI's contention that GSA should award only one contract because there is no technical reason for GSA to award two contracts is without merit. These two types of machines--dry silver and electrostatic--use different technology to produce prints of the material stored on the microfiche with resulting differences in the quality and clarity of the printout and, because of this difference, are better suited to different applications. In our opinion, GSA's election to award two contracts, one for each type of machine, was a reasonable response to GSA's responsibility to satisfy the different needs of widely varying agencies. See, e.g., Independent Products Co., Inc., B-207519.2, April 22, 1983, 83-1 CPD 434, in which we reached the same conclusion regarding GSA's determination to award separate contracts for both plastic and wood coat hangers, decidedly less complex technologically than the equipment considered here.

In sum, we find that GSA's actions in this procurement were reasonable. The protest is denied.

*for*   
Comptroller General  
of the United States